

PUBLIC UTILITIES COMMISSION

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Ratesetting

TO PARTIES OF RECORD IN APPLICATION 19-02-016 ET AL:

This is the proposed decision of Administrative Law Judge Cathleen Fogel. Until and unless the Commission hears the item and votes to approve it, the proposed decision has no legal effect. This item may be heard, at the earliest, at the Commission's May 7, 2020 Business Meeting. To confirm when the item will be heard, please see the Business Meeting agenda, which is posted on the Commission's website 10 days before each Business Meeting.

Parties of record may file comments on the proposed decision as provided in Rule 14.3 of the Commission's Rules of Practice and Procedure.

The Commission may hold a Ratesetting Deliberative Meeting to consider this item in closed session in advance of the Business Meeting at which the item will be heard. In such event, notice of the Ratesetting Deliberative Meeting will appear in the Daily Calendar, which is posted on the Commission's website. If a Ratesetting Deliberative Meeting is scheduled, *ex parte* communications are prohibited pursuant to Rule 8.2(c)(4)(B).

/s/ KIMBERLY KIM for
Anne E. Simon
Chief Administrative Law Judge

AES:gp2
Attachment

Decision **PROPOSED DECISION OF ALJ FOGEL** (Mailed 4/1/2020)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of PACIFIC GAS AND
ELECTRIC COMPANY for a Waiver
of the Capital Structure Condition
(U39M).

Application 19-02-016

And Related Matter.

Application 19-02-017

**DECISION APPROVING APPLICATIONS OF SOUTHERN CALIFORNIA
EDISON COMPANY AND PACIFIC GAS AND ELECTRIC COMPANY
FOR WAIVER OF THE CAPITAL STRUCTURE CONDITION**

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**DECISION APPROVING APPLICATIONS OF SOUTHERN CALIFORNIA
EDISON COMPANY AND PACIFIC GAS AND ELECTRIC COMPANY
FOR WAIVER OF THE CAPITAL STRUCTURE CONDITION**

Summary

This decision approves Southern California Edison Company (SCE) and Pacific Gas and Electric Company's (PG&E) applications for waiver of Affiliate Transaction Rule IX.B, which requires the major energy utilities to maintain their authorized capital structure requirement on average over the period the capital structure is in effect for ratemaking purposes. SCE's waiver application is approved for two years from issuance of this decision or until the Commission makes a final determination on SCE cost recovery for costs stemming from 2017 and 2018 wildfires in its service territory and the Montecito Mudslide, whichever comes first. PG&E's waiver application is approved until such time as the Commission finds is appropriate in Investigation (I.) 19-09-016 addressing PG&E's Plan of Reorganization.

This proceeding is closed.

1. Background

On February 2, 2019 Pacific Gas and Electric Company (PG&E) filed Application (A.) 19-02-016, *Application for a Waiver of the Capital Structure Condition* and Southern California Edison Company (SCE) filed A.19-02-017, *Application for Approval of Waiver of Capital Structure Rule*. Both A.19-02-016 and A.19-02-017 (Applications) request a waiver of the capital structure condition adopted by the California Public Utilities Commission (Commission) in Decision (D.) 06-12-029 for both utilities and in D.96-11-017 for PG&E. D.96-11-017 required PG&E to maintain its authorized capital structure on average over the period the capital structure is in effect for ratemaking purposes. D.96-11-017 further required PG&E to file an application for a waiver of this requirement, on

a case-by-case basis and in a timely manner, if an adverse financial event reduces the utility's equity ratio by one percent or more. D.06-12-029 updated the Commission's Affiliate Transaction Rule IX.B (Rule IX.B) to also adopt these two requirements for SCE, San Diego Gas & Electric Company (SDG&E), and Southern California Gas Company (SoCalGas).¹

1.1. PG&E— Relief Sought

In D.12-12-034, the Commission authorized a minimum common equity ratio of 52 percent on average for PG&E.² PG&E's Application indicates that, as a result of the October 2017 Northern California wildfires and the November 2018 Camp fire that began near Paradise, Butte County, PG&E recorded wildfire liabilities of \$14 billion (non-cash and pre-tax) in its 2018 Securities and Exchange Commission (SEC) Form 10-K filed on February 28, 2019. These non-cash charges resulted in a net \$8.9 billion after-tax charge in 2018, according to PG&E.³ PG&E states the 2017 Northern California wildfires included fires in Napa, Sonoma, Butte, Humboldt, Mendocino, Lake, Nevada and Yuba Counties and the area surrounding Yuba City.⁴ PG&E explains that non-cash charges are "accounting estimates of future cash outlays that PG&E would make as a result of settlements or court judgements that require PG&E to pay damage claims related to these fires."⁵

¹ D.06-12-029, "Opinion Adopting Revisions To (1) The Affiliate Transaction Rules And (2) General Order 77-L, As applicable to California's Major Energy Utilities and Their Holding Companies," Appendix A-3 at 32.

² D.12-12-034, Ordering Paragraph 4.

³ PG&E, "Application for a Waiver from the Capital Structure Condition," February 2, 2019 at 3.

⁴ *Id.* at 6.

⁵ PG&E, "Responses to ALJ Ruling," January 21, 2020 at Attachment, 0-2.

PG&E's Application states that, at the time that it filed its SEC Form 10-K on February 28, 2019, and following generally accepted accounting principles (GAAP), PG&E's equity ratio had declined to 41 percent as a result of these non-cash charges and this ratio could decline further depending on future developments. PG&E's Application requests a waiver of the capital structure requirement in Rule IX.B that it maintain a 52 percent equity ratio on average until such time as the uncertainties related to the extent of PG&E liabilities from the 2017 Northern California wildfires and the 2018 Camp fire are resolved.⁶

PG&E's Application indicates that the accounting charges that triggered the Application are non-cash charges and that, pending the resolution of the uncertainties described in this Application, a waiver of the capital structure requirement will not harm the public or PG&E's customers.⁷ PG&E clarifies that this is because the non-cash charges do not impact how its existing assets are financed – the proportions of debt and equity used to acquire existing assets did not change as a result of the non-cash charges.⁸

On August 27, 2019 and November 12, 2019, PG&E filed two motions. The August 27, 2019 motion indicates that PG&E's August 9, 2019 SEC 10-Q filing for the period ending June 30, 2019 reports an additional \$3.9 billion in charges for claims against PG&E relating to the 2017 and 2018 wildfires, bringing PG&E's

⁶ PG&E Application at 12. PG&E describes these uncertainties as stemming from additional complaints, claims and litigation that it expects to be filed related to the 2017 and 2018 wildfires and its filing for reorganization under Chapter 11 in the U.S. Bankruptcy Court for the Northern District of California on January 29, 2019. PG&E states that pending civil litigation against PG&E related to the 2017 and 2018 files is currently stayed as a result of the commencement of the Chapter 11 cases and that it expects its obligations with respect to the wildfires to be determined through the Chapter 11 process. PG&E also states that it is the subject of criminal investigations with respect to both wildfires.

⁷ *Ibid.*

⁸ PG&E, "Responses to Administrative Law Judge Ruling," January 21, 2020 at 4.

total aggregate claims stemming from the 2017 and 2018 wildfires to \$18.1 billion, and its equity ratio to 34 percent.⁹

PG&E's November 12, 2019 motion indicates that PG&E's October 31, 2019 Form 10-Q filing recorded an additional \$567 million in charges for claims related to the 2018 Camp fire and \$20 billion in claims related to the 2017 Northern California wildfires, for total aggregated wildfire-related claims reported at that time of \$20.4 billion. With this updated information, PG&E reports that, as of November 12, 2019, its equity ratio declined to approximately 30.4 percent.¹⁰

In filings on December 16, 2019 and December 26, 2019, PG&E states that it anticipates recording an additional pre-tax charge stemming from the 2017 and 2018 Northern California wildfires of \$4.9 billion for the quarter ending December 31, 2019. Based on the financial information reported to the SEC for the quarterly period ending September 31, 2019, PG&E projects that it will report in its SEC 10-K filing for the period ending December 31, 2019 that its equity ratio has further declined to 21 percent.¹¹ PG&E also reported that it filed a proposed Settlement Agreement on December 17, 2019 in Investigation (I.) 19-06-015 that would address some costs related to the 2017 Northern California Wildfires but that a complex series of approvals are necessary prior to implementation of the

⁹ PG&E, "Motion of Pacific Gas and Electric Company for Administrative Law Judge Ruling Updating Information," August 27, 2019. PG&E's motion states that the \$18.1 billion also includes \$212 million in claims for a 2015 Butte fire.

¹⁰ PG&E, "Motion of Pacific Gas and Electric Company for Administrative Law Judge Ruling Updating Information," November 12, 2019 at 3.

¹¹ PG&E, "Notification of Change in Equity Ratio," December 16, 2019 at 3.

Settlement.¹² In a February 27, 2020 filing, PG&E confirmed that its equity ratio as included in its Form 10-K for the quarter ending December 31, 2019 filed with the SEC on February 18, 2020 had dropped to 20.4 percent.¹³

In a January 21, 2020 filing in response to an Administrative Law Judge (ALJ) ruling, PG&E recommends that the Commission coordinate and address the timing, conditions and approval for ending a waiver to PG&E's capital structure condition together with I.19-09-016, the Commission proceeding addressing its Chapter 11 Bankruptcy. PG&E states that, when it exits from its Court supervised Chapter 11 Bankruptcy its goal is to fund its liabilities from the 2017 and 2018 Northern California wildfire in a manner resulting in restoration of its equity ratio to the authorized level of 52 percent. PG&E indicates that it cannot restore its equity ratio to the authorized level until it exits from its Chapter 11 case and implements a Plan of Reorganization as approved in I.19-09-016. PG&E notes that it may need regulatory adjustments or additional time after its exit from Chapter 11 Bankruptcy to reach the authorized equity level.¹⁴

PG&E requests that the Commission grant PG&E a waiver of the capital structure condition until such time as the Commission determines in I.19-09-016 how and when PG&E's equity percentage will return to 52 percent. PG&E recommends that the Commission adopt a new compliance period for its authorized equity ratio, which PG&E proposes should start no sooner than the

¹² PG&E, "Notification of Change in Equity Ratio," December 26, 2019. *See also* "Joint Motion of PG&E, the Safety and Enforcement Division of the CPUC, the Coalition of California Utility Employees and the Office of the Safety Advocate for Approval of Settlement Agreement," December 17, 2019.

¹³ PG&E, "Notification of Change in Equity Ratio Pursuant to ALJ Ruling," February 27, 2020.

¹⁴ PG&E, "Responses to ALJ Ruling," January 21, 2020 at 2.

first day of the month following the effective date of an approved Plan of Reorganization in I.19-09-016.¹⁵

1.2. SCE— Relief Sought

In D.12-12-034, the Commission authorized a minimum equity ratio of 48 percent on average for SCE.¹⁶ SCE's Application states that its equity ratio for the month of December 2018 declined by more than one percent as a result of a net charge of \$1.8 billion reported in its 2018 SEC Form 10-K, filed on February 28, 2019 even though when averaged over a 37-month rolling period, its equity ratio remains within the authorized level. SCE's Application indicates that the accrued net \$1.8 billion charge results from contingent liabilities stemming from the December 2017 Thomas Fire in Ventura County, the 2018 Woolsey wildfire in Los Angeles and Ventura Counties, and the subsequent 2018 Montecito Mudslides (collectively 2017 and 2018 events) in Santa Barbara County.

SCE states that its liabilities from the 2017 and 2018 events are offset in its SEC filing by a recorded probable insurance recovery of \$2 billion and a recorded probable cost recovery of \$135 million from the Federal Energy Regulatory Commission (FERC) but that SCE lacks sufficient certainty to estimate an offsetting regulatory asset from the Commission at this time.¹⁷ SCE states that it will record incremental charges for uninsured damages stemming from the 2017 and 2018 events in its Wildfire Expense Memorandum Account (WEMA),

¹⁵ *Id.* at 3.

¹⁶ D.12-12-034, Ordering Paragraph 1.

¹⁷ SCE, "Application for Waiver of Capital Structure Rule," February 28, 2019 at 9. SCE cites D.17-11-033, Decision Denying Application (December 6, 2018) in A.15-09-010 regarding SDG&E's request for cost recovery related to 2007 wildfire activity as the basis for this uncertainty.

authorized in D.18-11-051, and later seek recovery for these incremental charges with the Commission.¹⁸

SCE's Application requests Commission authorization to exclude the \$1.8 billion net charge and any future charges (net of credits) from calculations of SCE's compliance with Rule IX.B until the Commission determines SCE cost recovery for the 2017 and 2018 events. SCE indicates that it may have to issue debt to pay claims stemming from the 2017 and 2018 events and that SCE therefore also seeks to have such debt issuances excluded from its capital structure compliance calculation to the extent that they are equal to or less than the aggregate net non-cash charges.¹⁹ SCE requests that the Commission find that SCE filed its waiver Application in a timely manner and that SCE is not in violation of Rule IX.B.

1.3. Procedural Background

On April 5, 2019, The Utility Reform Network (TURN) filed protests to PG&E and SCE's Applications, the California Public Advocates' Office (Cal Advocates) filed a motion for party status, and the Institutional Equity Investors (IEI) filed a response to PG&E's Application. IEI generally supports the Applications but TURN opposes certain requests and Cal Advocates identifies several issues for Commission consideration.

TURN states that the Commission should limit approval of any waiver of the capital structure requirement to the specific triggering circumstances indicated in the Applications. TURN also requests that the Commission avoid any determination that costs related to the 2017 and 2018 events may be excluded

¹⁸ D.18-11-051 *Decision Authorizing Southern California Edison Company to Establish a Wildfire Expense Memorandum Account*; SCE, "Responses to ALJ Ruling," January 21, 2020 at 4.

¹⁹ "Opening Brief," August 30, 2019 at 6.

on an ongoing basis from the calculation of each utility's equity ratio. TURN argues that the Commission should require SCE and PG&E to provide notification if any additional triggering events arise prior to resolution of the wildfire charges that reduce the equity ratio more than one percent. Cal Advocates raises the issue of whether the utilities' Applications include adequate ratepayer protections and suggests the Commission require SCE and PG&E to report future charges, debts or offsetting items related to the 2017 and 2018 wildfires.

A prehearing conference (PHC) was held on April 30, 2019 during which the parties discussed, amongst other matters, the question of the appropriate time-period to calculate whether a utility's equity ratio had been reduced by one percent or more. While SCE's Application calculated reductions in its equity ratio on a monthly basis and over a 37-month rolling period, PG&E's Application did not include this information. The assigned ALJ requested additional clarifying information, which PG&E filed on May 10, 2019. The assigned ALJ granted Cal Advocates' motion for party status at the PHC.

The assigned Commissioner issued a Scoping Memo and Ruling (Scoping Memo) on May 29, 2019, consolidating the two Applications. On June 6, 2019, San Diego Gas & Electric Company (SDG&E) and Southern California Gas Company (SoCalGas) filed a joint motion requesting party status, which the assigned ALJ granted on July 8, 2019. On July 12, 2019, PG&E, on behalf of TURN, Cal Advocates, SCE, SDG&E and SoCalGas, requested additional time for filing of either a proposed settlement agreement or opening and reply briefs. The assigned ALJ granted this request in a procedural email on July 15, 2019. On August 30, 2019, SCE and PG&E filed opening briefs. No party filed reply briefs.

2. Issues Before the Commission

As outlined in the Scoping Memo, the issues to be determined in this proceeding are the following:

1. Did PG&E and SCE file their Applications for waiver of the capital structure condition on a timely basis?
2. How should “adverse financial event” be defined for the purposes of considering these waiver Applications?
3. Did PG&E and SCE use appropriate time-periods to calculate whether their equity ratios had been reduced by one percent or more?
4. Should PG&E be granted a waiver for the adverse event named as triggering its Application, namely the taking and reporting of \$8.9 billion in net after-tax charges stemming from the 2018 Camp fire and 2017 Northern California Wildfires? Or, should PG&E be granted a waiver for a series of adverse financial events, and/or until there is a resolution to the uncertainties described in its Application?
5. Should SCE be granted a waiver for the adverse event named as triggering its Application, namely the taking and reporting of a \$1.8 billion net charge against earnings stemming from costs related to the 2017 and 2018 events? Or, should SCE be granted a waiver for a series of adverse financial events?

3. Have SCE and PG&E Complied with the Requirement of Rule IX.B to File an Application for a Waiver?

The Commission finds SCE and PG&E in compliance with the provision of Rule IX.B requiring the major energy utilities to file an application for a waiver of the capital structure requirement if the company’s equity ratio declines by more than one percent on average over the period the capital structure is in effect for ratemaking purposes.

3.1. Timely Filing of Waiver Applications

Rule IX.B requires that the major energy utilities file this waiver “in a timely fashion.”²⁰ Although this phrase is not defined in Rule IX.B, both SCE and PG&E filed their Applications for a waiver of the capital structure requirement on February 28, 2019, the same day each company filed an SEC 2018 10-K form indicating net non-cash charges of \$1.8 billion and \$8.6 billion respectively. SCE and PG&E could not have filed their Applications in a timelier fashion. No party disputes that SCE and PG&E complied with the requirement of Rule IX.B to timely file an application for a waiver of the capital structure requirements. We find that they have done so.

3.2. Time Period for Calculation of Equity Ratio

Although Rule IX.B does not specify the exact time period over which a utility is expected to calculate a reduction in its equity ratio or the period over which compliance with the authorized capital structure should be assessed, both PG&E and SCE reasonably interpreted these time periods in their Applications. Rule IX.B requires a utility to maintain its authorized capital structure on average “over the period the capital structure is in effect for ratemaking purposes.”²¹ While this could reasonably be interpreted as the time period for which the capital structure is in place, i.e., from the start of a given cost of capital period to the end of that period, SCE indicates that its 2018 Affiliate Compliance Plan identifies the capital structure requirement as pertaining to a historical 37-month rolling period.²²

²⁰ D.06-12-029, “Opinion Adopting Revisions To (1) The Affiliate Transaction Rules And (2) General Order 77-L, As applicable to California’s Major Energy Utilities and Their Holding Companies,” Appendix A-3 at 32.

²¹ *Ibid.*

²² SCE Application at 4.

SCE's Application indicates that its equity ratio declined more than one percent when calculated for the month of December 2018 but not when calculated on a 37-month rolling basis. PG&E indicates that its equity ratio declined by more than one percent when calculated on a monthly basis as well as on a 37-month rolling basis.²³

The one-month period is a reasonable interpretation of Rule IX.B's expectations of the time period for a utility to calculate a decrease in its equity ratio of one or more percent. The 37-month rolling basis is a reasonable interpretation of Rule IX.B's requirement that the utility maintain the authorized capital structure over the period for which the authorized capital structure is in effect for ratemaking purposes.

3.3. Defining Adverse Financial Event

Both SCE and PG&E reasonably interpreted the term "adverse financial event" as used in Rule IX.B in their waiver Applications. The specific adverse financial event that triggered both Applications was an SEC filing on February 28, 2019 that indicated a recorded non-cash charge according to GAAP principles. PG&E explains that for the purpose of Commission reporting, "adverse financial event" should be interpreted as an event that had an adverse impact on the financial status, or health, of the company and that this occurred when PG&E's submitted its audited financial statements to the SEC, materially impacting PG&E's equity level for SEC reporting purposes.²⁴ PG&E further explains that for the purpose of its Application "adverse financial event" should

²³ PG&E, "Response of Pacific Gas and Electric Company to Administrative Law Judge Request for Information," May 10, 2019.

²⁴ PG&E, "Opening Brief," August 30, 2019 at 4.

be interpreted to reference the charges PG&E recorded in relation to the 2017 Northern California wildfires and the 2018 Camp fire.

SCE's Application and its January 21, 2020 filing assert that multiple adverse events, such as the 2017 and 2018 events, can result in one or more adverse financial events subject to the same waiver, as long as those adverse events and adverse financial events are clearly circumscribed.²⁵

These are reasonable interpretations of the concept of adverse financial event as set forth in Rule IX.B.

3.4. Compliance with Rule IX.B Requirements

The history of Rule IX.B indicates that the Commission's primary aim in adopting it was to "ensure a utility's financial integrity is protected from the riskier market ventures of its unregulated affiliates and parent holding company."²⁶ The adverse financial events that triggered the current Applications do not resemble this originally envisioned purpose. TURN, for instance, observes that Rule IX.B "did not apparently contemplate a triggering event coming from the activities of the utility, but rather from its unregulated parent or affiliate."²⁷

Rule IX.B as adopted does not require a utility to adhere to a limited set of reasons for a waiver application. We find that SCE and PG&E filed their waiver Applications for legitimate reasons- the taking of non-cash charges in their

²⁵ SCE, "Opening Brief," August 30, 2019 at 6.

²⁶ D.06-12-029, "Opinion Adopting Revisions To (1) The Affiliate Transaction Rules And (2) General Order 77-L, As applicable to California's Major Energy Utilities and Their Holding Companies," at 2.

²⁷ TURN, "Protest of The Utility Reform Network to Applications for Waiver of the Capital Structure Rule," April 5, 2019 at 5.

December 31, 2018 SEC 10-K filings for the wildfire and mudslide events of 2017 and 2018.

Rule IX.B indicates that a utility that has filed an application for a waiver of the capital structure condition “shall not be considered in violation of this Rule during the period the waiver is pending resolution.”²⁸ No party argued that PG&E and SCE are not in compliance with Rule IX.B requirements.

We find that SCE and PG&E are compliant with Rule IX.B. Both timely filed Applications to waive the Rule IX.B capital structure requirement that they maintain their authorized capital structure on average over the period the capital structure is in effect for ratemaking purposes.

4. Should the Commission Grant a Waiver from Capital Structure Requirements for SCE and PG&E?

This section approves SCE and PG&E’s Applications for a waiver from the capital structure requirement.

4.1. Approval of PG&E’s Waiver Application

We approve PG&E’s Application for a waiver from the capital structure requirement set forth in Rule IX.B until such time as the Commission decides in I.19-09-016 how and when PG&E’s equity percentage will return to 52 percent. As noted by PG&E in its Application and subsequent filings a number of outstanding, complex issues remain to be addressed regarding PG&E’s exit from its Chapter 11 Bankruptcy and its Plan of Reorganization. We concur that PG&E requires a waiver of the capital structure requirement consistent with and subject to the Commission’s review and approval of PG&E’s Plan of Reorganization in

²⁸ D.06-12-029, “Opinion Adopting Revisions To (1) The Affiliate Transaction Rules And (2) General Order 77-L, As applicable to California’s Major Energy Utilities and Their Holding Companies,” Appendix A-3 at 32.

I.19-09-016 and any determinations the Commission may make in that proceeding regarding PG&E's capital structure.²⁹ We limit the scope of PG&E's authorized exclusions from its capital waiver requirement to charges and costs stemming from the 2017 Northern California Wildfires and the 2018 Camp fire. This is a prudent approach that reflects PG&E's Application and ensures continuity of the capital structure requirement.

We find that a temporary waiver of PG&E's capital structure requirement will not harm the public or PG&E's customers because the non-cash charges do not impact how PG&E's existing assets are financed. PG&E's proportions of debt and equity used to acquire existing assets have not changed as a result of the non-cash charges.

The Commission determination on how and when PG&E's equity percentage will return to 52 percent could also establish a new compliance period for PG&E's authorized equity ratio. PG&E's Application estimated the average equity ratio over a rolling 37-month period, but a different period may be appropriate in the future.

To keep the Commission and parties informed of ongoing developments, we direct PG&E to file a Compliance Notification on the service list of this proceeding if its equity ratio declines one percent or more from the level most recently reported, as measured over a one-month period, until a Commission decision in I.19-09-016.

4.2. Approval of SCE's Waiver Application

We approve SCE's Application and authorize SCE to exclude the \$1.8 billion net charge and any future charges (net of credits) to SCE's common

²⁹ PG&E, "Responses to ALJ Ruling," January 21, 2020 at 2.

equity associated with the 2017 and 2018 events for purposes of calculating compliance with Rule IX.B. We further authorize SCE to exclude debt issuance for the purpose of paying claims related to the 2017 and 2018 events from its capital structure compliance calculation to the extent that they are equal to or less than the aggregate net non-cash charges. This narrow authorization constitutes SCE's capital structure waiver, is effective immediately, and remains in effect for two years from issuance of this decision or until the Commission adopts a decision regarding SCE's request for cost recovery related to the 2017 and 2018 events, whichever comes first.

SCE's Application indicates that it reported to the SEC \$1.8 billion in net non-cash charges for the 2017 and 2018 events but that this amount included estimated regulatory assets and insurance payments and that the total charges could increase over time. SCE also states that it may have to issue debt for the purpose of paying claims related to the 2017 and 2018 events. No party refuted these points.

We agree that the total non-cash charges stemming from the 2017 and 2018 events could increase, or potentially decrease, over time depending on a variety of variables. We also agree that it is reasonable to include in SCE's waiver any debt issuance for the purpose of paying claims related to the 2017 and 2018 events that would impact SCE's capital structure compliance calculation to the extent that such debt issuance is equal to or less than the aggregate net non-cash charges. Such debt issuance up to the amount of the non-cash charges would not further change SCE's equity ratio and, as such, would not negatively impact ratepayers.

The scope of adverse events for which we grant SCE's waiver is limited to liabilities and costs associated with the December 2017 Thomas Fire in Ventura

County, the 2018 Woolsey wildfire in Santa Barbara, and the subsequent 2018 Montecito Mudslides. In SCE's case, limiting the scope of the waiver granted to a clear set of adverse events that comprise the adverse financial event triggering the filing allows the Commission to appropriately ensure financial oversight with regards to the capital structure requirement.

The authorizations adopted for SCE in this decision shall continue for two years from issuance of this decision or until such time as the Commission makes a determination regarding SCE's recovery of costs associated with the 2017 and 2018 events, whichever comes first. To ensure that SCE returns to its authorized equity ratio subsequent to a Commission determination regarding SCE cost recovery for the 2017 and 2018 events, we require the following: ninety days after a Commission determination regarding SCE's recovery of costs associated with the 2017 and 2018 events, SCE shall submit an advice letter stating that it has returned to its authorized capital structure, or, if applicable, shall file an application proposing a plan and time frame over which SCE will return its cost of capital structure to the level most recently approved by the Commission at that time.³⁰ If the Commission has not made a determination regarding SCE cost recovery for the 2017 and 2018 events within two years of issuance of this decision, SCE should file another application for a waiver from its capital structure pursuant to Rule IX.B.

SCE shall file a Compliance Notification to this proceeding if its equity ratio declines one percent or more from the level most recently reported, as

³⁰ The most recent Commission decision at the time the Commission makes a determination regarding SCE's recovery of costs associated with the 2017 and 2018 events could be SCE's Cost of Capital Application as approved in D.19-12-056 or a subsequent Commission decision.

measured over a one-month period, until such time as the Commission has approved a plan for the utility to return to its authorized equity ratio.

5. Rule IX.B Requirements

Both SCE and PG&E request that the Commission clarify or modify aspects of Rule IX.B to be applied in the future.³¹ In particular, both utilities urge the Commission to clarify in this decision the appropriate time period over which a utility must calculate a reduction in its equity ratio and the period of time over which compliance with the adopted capital structure should be assessed for purposes of future compliance with Rule IX.B.

We decline to further clarify Rule IX.B requirements in this decision. We agree that additional clarification could be helpful but disagree that this is the correct proceeding to consider modifications to Rule IX.B.

6. Comments on Proposed Decision

The proposed decision of ALJ Fogel in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on _____, and reply comments were filed on _____ by _____.

7. Assignment of Proceeding

Commission Genevieve Shiroma is the assigned Commissioner and Cathleen A. Fogel is the assigned Administrative Law Judge in this proceeding.

³¹ PG&E, "Opening Brief of Pacific Gas and Electric Company on Questions in Assigned Commissioner's Scoping Memo and Ruling," August 30, 2019 at 8; SCE Application at 11; SCE, "Opening Brief of Southern California Edison Company (U338E) for Waiver of Capital Structure Rule," August 30, 2019, at 10.

Findings of Fact

1. D.12-12-034 authorized a minimum equity ratio of 48 percent on average for SCE. SCE's equity ratio for the month of December 2018 declined by more than one percent, to 45.2 percent, but did not decline by more than one percent when averaged over a 37-month rolling period.

2. D.12-12-034 authorized a minimum equity ratio of 52 percent on average for PG&E. Starting in late 2018, PG&E's equity ratio declined by more than one percent when calculated on a monthly and on a 37-month rolling basis.

3. PG&E and SCE's Applications reasonably interpret the time period in Rule IX.B to calculate a decrease in their equity ratios and the time period over which the authorized capital structure must be maintained on average.

4. Both SCE and PG&E reasonably interpret the term adverse financial event as used in Rule IX.B in their Applications.

5. PG&E and SCE timely filed their Applications.

6. Rule IX.B provides that a utility that has filed an application for a waiver of the capital structure condition shall not be considered in violation of the Rule during the period the waiver is pending resolution.

7. SCE and PG&E are compliant with the provision of Rule IX.B requiring the major energy utilities to timely file an application for a waiver of the capital structure requirement if the company's equity ratio declines by more than one percent over the period the capital structure is in effect for ratemaking purposes.

8. PG&E reported non-cash and pre-tax charges of \$14 billion in its SEC Form 10-K filed February 28, 2019 and \$20.4 billion in total aggregated claims stemming from the 2017 Northern California wildfires and the 2018 Camp fire as of October 31, 2019.

9. Based on non-cash charges stemming from the October 2017 Northern California wildfires and the November 2018 Camp fire, PG&E reported that its equity ratio had declined to 41 percent as of December 31, 2018, 34 percent as of June 30, 2019, 30.4 percent as of September 30, 2019, and 20.4 percent as of December 31, 2019.

10. A number of complex issues remain to be addressed regarding PG&E's liabilities for the 2017 Northern California Wildfires and the 2018 Camp fire and the details of its Plan of Reorganization before the Commission can make appropriate determinations on PG&E's authorized capital structure in connection with its exit from Chapter 11 Bankruptcy.

11. A temporary waiver of PG&E's capital structure requirement will not harm the public or PG&E's customers.

12. Limiting the scope of PG&E's authorized exclusions from its capital waiver requirement to charges and costs stemming from the 2017 Northern California Wildfires and the 2018 Camp fire reflects PG&E's Application and ensures continuity of the capital structure requirement.

13. SCE reported \$1.8 billion in net non-cash charges to the SEC in its 10-K filing on February 28, 2019 stemming from the December 2017 Thomas Fire in Ventura County, the 2018 Woolsey wildfire in Los Angeles and Ventura County, and the subsequent 2018 Montecito Mudslides in Santa Barbara Country.

14. SCE's total non-cash charges stemming from the 2017 and 2018 events could increase, or potentially decrease, over time depending on a variety of variables.

15. A temporary waiver of SCE's capital structure requirement will not harm the public or SCE customers because the non-cash charges reported to the SEC do not impact how SCE's existing assets are financed.

16. SCE issuance of debt up to the level of any net non-cash charges for the 2017 and 2018 events may be excluded from calculation of its equity ratio during the waiver period without harming ratepayers because such debt will not be used to finance assets in the rate base and would be paid off with equity over time.

17. To effectuate its waiver, it is reasonable for SCE to exclude, for purposes of calculating compliance with Rule IX.B, the \$1.8 billion net charge reported by SCE to the SEC on February 28, 2019, future charges net of credits stemming from the 2017 and 2018 events, and debt issuance for the purpose of paying claims stemming from the 2017 and 2018 events to the extent that the debt amount is equal to or less than the aggregate net non-cash charges.

18. Requiring SCE and PG&E to file notifications if their equity ratios further decline ensures that the Commission and parties are kept informed of developments impacting the utilities' equity ratios.

Conclusions of Law

1. The Commission should approve PG&E's Application for waiver of its capital structure requirement until such time as the Commission finds it appropriate in PG&E's Plan of Reorganization proceeding, I.19-09-016.

2. The Commission should limit the scope of PG&E's authorized exclusions from its capital waiver requirement to charges and costs stemming from the 2017 Northern California Wildfires and the 2018 Camp fire

3. The Commission will determine how to address PG&E's equity percentage in I.19-09-016 and may also establish a new compliance period for PG&E's authorized equity ratio.

4. The Commission should approve SCE's Application for a waiver of its capital structure requirement for two years from issuance of this decision or until

the Commission determines SCE cost recovery for the 2017 and 2018 wildfire and mudslide events, whichever comes first.

5. The Commission should limit the scope of SCE's authorized exclusions from its capital structure requirement to non-cash charges and debt issuance equal to or less than the aggregate net non-cash charges stemming from the December 2017 Thomas Fire in Ventura County, the 2018 Woolsey wildfire in Los Angeles and Ventura County, and the subsequent 2018 Montecito Mudslides in Santa Barbara County.

6. The Commission should require SCE to submit an advice letter stating that it has returned to its authorized capital structure, or, if applicable, to file an application containing a plan and timeline over which SCE will return its cost of capital structure to the level most recently approved by the Commission ninety days after a Commission determination regarding SCE's recovery of costs associated with the 2017 and 2018 events.

7. The Commission should require SCE and PG&E to file notifications to this proceeding if their equity ratios decline one percent or more from the level most recently reported, as measured over a one- month period, until such time as the Commission has approved a plan for the utility to return to its authorized equity ratio.

8. This proceeding should be closed.

O R D E R

IT IS ORDERED that:

1. Pacific Gas and Electric Company's (PG&E) Application for a waiver from the capital structure requirement set forth in Affiliate Transaction Rule IX.B is approved for charges and costs stemming from the 2017 Northern California Wildfires and the 2018 Camp fire until such time as the Commission makes

further determinations in Investigation 19-09-016 regarding PG&E's authorized capital structure.

2. Southern California Edison Company's (SCE) Application for a waiver from the capital structure requirement set forth in Affiliate Transaction Rule IX.B is approved for current and future charges net of credits stemming from the 2017 and 2018 wildfire and mudslide events and debt issuance for the purpose of paying claims related to the 2017 and 2018 wildfire and mudslide events to the extent that they are equal to or less than the aggregate net charges for two years from issuance of this decision or until the Commission makes a determination on SCE cost recovery for the 2017 and 2018 events, whichever comes first.

3. Southern California Edison Company (SCE) shall submit a Tier 1 advice letter stating that it has returned to its authorized capital structure, or, if applicable, shall file an application including a plan and proposing a time frame over which it will return its cost of capital structure to the level most recently approved by the Commission no more than ninety days after a Commission determination regarding SCE recovery of costs associated with the 2017 and 2018 events.

4. Pacific Gas and Electric Company and Southern California Edison Company shall each file a Compliance Notification of Change in Equity Ratio if their equity ratios decline more than one percent from the ratio most recently filed in this proceeding within 10 days of the adverse financial event triggering a greater than one percent decline, and shall calculate their equity ratios on a monthly basis for purposes of these notifications, until such time as the Commission has approved a plan for the utility to return to its authorized equity ratio.

5. This proceeding is closed.

This order is effective today.

Dated _____, at San Francisco, California